

SENATE BILL 309

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2004 Regular Session  
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By: ~~Senators Pinsky, Brochin, and Garagiola~~ Garagiola, Britt, and Dyson

Introduced and read first time: February 2, 2004

Assigned to: Judicial Proceedings

Reassigned: Education, Health, and Environmental Affairs, February 5, 2004

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 23, 2004

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **State Government - Administrative Procedure Act - Proposed Regulations**

3 FOR the purpose of requiring agencies to submit proposed regulations to the  
4 Department of Legislative Services; prohibiting the Joint Committee on  
5 Administrative, Executive, and Legislative Review from approving a request for  
6 emergency adoption of a proposed regulation during a certain period unless the  
7 Governor makes a certain declaration; requiring the Committee to impose a  
8 time limit, not to exceed a certain length, on the effectiveness of emergency  
9 regulations; requiring the website of the General Assembly to include certain  
10 information about certain emergency regulations the Committee has received;  
11 requiring the Department of Legislative Services to maintain a list of members  
12 of the public who have requested to receive notice of the Department's receipt of  
13 certain emergency regulations; requiring the Department to provide certain  
14 notice to certain members of the public; specifying the manner in which the  
15 Department shall administer the list; requiring certain promulgating units to  
16 provide copies of emergency regulations to members of the public, on request;  
17 authorizing the Committee to ~~take certain actions on specific provisions of~~  
18 proposed regulations exercise certain powers over proposed or emergency  
19 regulations or certain provisions of proposed or emergency regulations; and  
20 generally relating to the Administrative Procedure Act and proposed  
21 regulations.

22 BY repealing and reenacting, with amendments,  
23 Article - State Government  
24 Section 10-110 and 10-111  
25 Annotated Code of Maryland

1 (1999 Replacement Volume and 2003 Supplement)

2 BY adding to

3 Article - State Government

4 Section 10-111.2 and 10-118

5 Annotated Code of Maryland

6 (1999 Replacement Volume and 2003 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
8 MARYLAND, That the Laws of Maryland read as follows:

9 **Article - State Government**

10 10-110.

11 (a) This section does not apply to a regulation adopted under § 10-111(b) of  
12 this subtitle.

13 (b) At least 15 days before the date a proposed regulation is submitted to the  
14 Maryland Register for publication under § 10-112 of this subtitle, the promulgating  
15 unit shall submit to the State Children's Environmental Health and Protection  
16 Advisory Council established under § 13-1503 of the Health - General Article for  
17 review any proposed regulations identified by the promulgating unit as having an  
18 impact on environmental hazards affecting the health of children.

19 (c) At least 15 days before the date a proposed regulation is submitted to the  
20 Maryland Register for publication under § 10-112 of this subtitle, the promulgating  
21 unit shall submit the proposed regulation to the Committee AND THE DEPARTMENT  
22 OF LEGISLATIVE SERVICES.

23 (d) (1) The Committee is not required to take any action with respect to a  
24 proposed regulation submitted to it pursuant to subsection (b) of this section.

25 (2) Failure by the Committee to approve or disapprove the proposed  
26 regulation during the period of preliminary review provided by subsection (b) of this  
27 section may not be construed to mean that the Committee approves or disapproves  
28 the proposed regulation.

29 (3) During the preliminary review period, the Committee may take any  
30 action relating to the proposed regulation that the Committee is authorized to take  
31 under §§ 10-111.1 and 10-112 of this subtitle.

32 (e) Prior to the date specified in subsection (b) of this section, the  
33 promulgating unit is encouraged to submit the proposed regulation to the Committee  
34 and to consult with the Committee concerning the form and content of that  
35 regulation.

1 10-111.

2 (a) (1) Except as provided in subsection (b) of this section, a unit may not  
3 adopt a proposed regulation until:

4 (i) after submission of the proposed regulation to the Committee  
5 for preliminary review under § 10-110 of this subtitle; and

6 (ii) at least 45 days after its first publication in the Register.

7 (2) (i) If the Committee determines that an appropriate review cannot  
8 reasonably be conducted within 45 days and that an additional period of review is  
9 required, it may delay the adoption of the regulation by so notifying the promulgating  
10 unit and the Division of State Documents, in writing, prior to the expiration of the  
11 45-day period.

12 (ii) If notice is provided to the promulgating unit pursuant to  
13 subparagraph (i) of this paragraph, the promulgating unit may not adopt the  
14 regulation until it notifies the Committee, in writing, of its intention to adopt the  
15 regulation and provides the Committee with a further period of review of the  
16 regulation that terminates not earlier than the later of the following:

17 1. the 30th day following the notice provided BY THE  
18 PROMULGATING UNIT under this subparagraph; or

19 2. the [75th] 105TH day following the initial publication of  
20 the regulation in the Register.

21 (3) The promulgating unit shall permit public comment for at least 30  
22 days of the 45-day period under paragraph (1)(ii) of this subsection.

23 (b) (1) The unit may adopt a proposed regulation immediately if the unit:

24 (i) declares that the emergency adoption is necessary;

25 (ii) submits the proposed regulation to the Committee AND THE  
26 DEPARTMENT OF LEGISLATIVE SERVICES, together with the fiscal impact statement  
27 required under subsection (c) of this section; and

28 (iii) has the approval of the Committee for the emergency adoption.

29 (2) (i) Subject to subparagraphs [(ii) and (iii)] (II), (III), AND (IV) of this  
30 paragraph, the approval of the Committee may be given:

31 1. by a majority of its members who are present and voting  
32 at a public hearing or meeting of the Committee; OR

33 2. IF STAFF OF THE COMMITTEE TRIES BUT IS UNABLE TO  
34 CONTACT A MAJORITY OF THE MEMBERS OF THE COMMITTEE IN A TIMELY MANNER  
35 AND IMMEDIATE ADOPTION IS NECESSARY TO PROTECT THE PUBLIC HEALTH OR

1 SAFETY, by its presiding Chairman OR, IF ITS PRESIDING CHAIRMAN IS  
2 UNAVAILABLE, BY ITS CO-CHAIRMAN[; or

3 3. if its presiding Chairman is unavailable, by its  
4 co-chairman].

5 (ii) If a member of the Committee requests a public hearing on the  
6 emergency adoption of a regulation, the Committee shall hold a public hearing.

7 (iii) 1. If a public hearing is held on the emergency adoption of a  
8 regulation, the Committee may not approve the emergency adoption except by a  
9 majority vote of the members present and voting at the hearing or at a meeting of the  
10 Committee subsequent to the hearing.

11 2. If a vote on the emergency regulation is not taken at the  
12 public hearing or immediately thereafter, the Committee members shall be provided  
13 at least 1 week's notice of the scheduling of any subsequent meeting to vote on the  
14 regulation.

15 (IV) UNLESS THE GOVERNOR DECLARES THAT IMMEDIATE  
16 ADOPTION IS NECESSARY TO PROTECT THE PUBLIC HEALTH OR SAFETY, THE  
17 COMMITTEE MAY NOT APPROVE THE EMERGENCY ADOPTION OF A REGULATION  
18 EARLIER THAN 10 BUSINESS DAYS AFTER RECEIPT OF THE REGULATION BY THE  
19 COMMITTEE AND THE DEPARTMENT OF LEGISLATIVE SERVICES.

20 (3) If there is no request for a public hearing, the staff of the Committee  
21 may poll, in person, by telephone, or in writing:

22 (i) the members of the Committee; or

23 (ii) if STAFF OF THE COMMITTEE TRIES BUT IS UNABLE TO  
24 CONTACT a majority of the members of the Committee [is unavailable] IN A TIMELY  
25 MANNER AND IMMEDIATE ADOPTION IS NECESSARY TO PROTECT THE PUBLIC  
26 HEALTH OR SAFETY, the presiding Chairman or the co-chairman.

27 (4) (i) The Committee may impose, as part of its approval, any  
28 condition[, including a time limit].

29 (ii) THE COMMITTEE SHALL IMPOSE, AS PART OF ITS APPROVAL, A  
30 TIME LIMIT NOT TO EXCEED 180 DAYS ON EACH REQUEST FOR EMERGENCY STATUS.

31 (III) If [the Committee imposes a time limit on the effectiveness of  
32 the regulation and] the unit does not adopt the regulation finally before the time  
33 limit expires, the status of the regulation reverts to its status before the emergency  
34 adoption.

35 (5) The Committee may rescind its approval by a majority of its members  
36 present and voting at a public hearing or meeting of the Committee.

1 (c) (1) The fiscal impact statement, prepared by the unit and submitted  
2 under subsection (b) of this section, shall state:

3 (i) an estimate of the impact of the emergency regulation on the  
4 revenues and expenditures of the State;

5 (ii) whether the State budget for the fiscal year in which the  
6 regulation will become effective contains an appropriation of the funds necessary for  
7 the implementation of the emergency regulation;

8 (iii) if an appropriation is not contained in the State budget, the  
9 source of the funds necessary for the implementation of the emergency regulation;  
10 and

11 (iv) whether the emergency regulation imposes a mandate on a local  
12 government unit.

13 (2) If the emergency regulation imposes a mandate on a local  
14 government unit, the fiscal impact statement shall:

15 (i) indicate whether the regulation is required to comply with a  
16 federal statutory or regulatory mandate;

17 (ii) if the information may be practicably obtained given the  
18 emergency circumstances of the regulations, include an estimate of the impact of the  
19 emergency regulation on the revenues and expenditures of local government units;  
20 and

21 (iii) if applicable, and if the required data is available, include the  
22 estimated effect on local property tax rates.

23 10-111.2.

24 (A) (1) THE WEBSITE OF THE GENERAL ASSEMBLY SHALL INCLUDE A LIST  
25 OF ALL EMERGENCY REGULATIONS THE COMMITTEE HAS RECEIVED BUT HAS NOT  
26 APPROVED.

27 (2) FOR EACH REGULATION, THE LIST SHALL INCLUDE:

28 (I) THE DATE THE COMMITTEE RECEIVED THE REGULATION;

29 (II) WHETHER A MEMBER OF THE COMMITTEE HAS REQUESTED A  
30 PUBLIC HEARING;

31 (III) THE DATE OF ANY PUBLIC HEARING SCHEDULED;

32 (IV) THE DATE AND A SUMMARY OF ANY ACTION THE COMMITTEE  
33 HAS TAKEN; AND

34 (V) THE NAME AND TELEPHONE NUMBER OF A MEMBER OF THE  
35 COMMITTEE'S STAFF WHO CAN PROVIDE FURTHER INFORMATION.

1 (3) A REGULATION SHALL BE ADDED TO THE LIST WITHIN 5 BUSINESS  
2 DAYS AFTER RECEIPT OF THE REGULATION BY THE COMMITTEE AND THE  
3 DEPARTMENT OF LEGISLATIVE SERVICES.

4 (B) (1) THE DEPARTMENT OF LEGISLATIVE SERVICES SHALL MAINTAIN A  
5 LIST OF MEMBERS OF THE PUBLIC WHO HAVE REQUESTED TO RECEIVE NOTICE  
6 WHEN THE DEPARTMENT OF LEGISLATIVE SERVICES RECEIVES PROPOSED  
7 REGULATIONS FOR WHICH THE PROMULGATING UNIT HAS REQUESTED EMERGENCY  
8 ADOPTION.

9 (2) A MEMBER OF THE PUBLIC WHO REQUESTS NOTICE UNDER THIS  
10 SUBSECTION SHALL SPECIFY:

11 (I) WHETHER THE INDIVIDUAL WANTS TO RECEIVE NOTICE BY  
12 UNITED STATES MAIL OR ELECTRONIC MAIL; AND

13 (II) WHICH AGENCIES' REGULATIONS THE INDIVIDUAL WANTS TO  
14 RECEIVE NOTICE OF RECEIPT.

15 (3) WITHIN 2 BUSINESS DAYS OF RECEIPT OF A PROPOSED REGULATION,  
16 THE DEPARTMENT OF LEGISLATIVE SERVICES SHALL PROVIDE NOTICE TO MEMBERS  
17 OF THE PUBLIC WHO HAVE REQUESTED NOTICE, AS SPECIFIED IN PARAGRAPH (2) OF  
18 THIS SUBSECTION.

19 (4) THE DEPARTMENT OF LEGISLATIVE SERVICES:

20 (I) MAY IMPOSE A REASONABLE FEE FOR SENDING NOTICE UNDER  
21 THIS SUBSECTION BY UNITED STATES MAIL; AND

22 (II) MAY NOT IMPOSE A FEE FOR SENDING NOTICE UNDER THIS  
23 ~~SECTION~~ SUBSECTION BY ELECTRONIC MAIL.

24 (5) UPON REQUEST, A PROMULGATING UNIT SHALL PROVIDE COPIES OF  
25 EMERGENCY REGULATIONS TO MEMBERS OF THE PUBLIC.

26 10-118.

27 ~~AFTER A PUBLIC HEARING ON A PROPOSED REGULATION, THE COMMITTEE~~  
28 ~~MAY APPROVE, DENY A REQUEST FOR EMERGENCY STATUS FOR, OPPOSE ADOPTION~~  
29 ~~OF, OR REQUEST A PROMULGATING UNIT TO DELAY ADOPTION OF SPECIFIC~~  
30 ~~PROVISIONS OF PROPOSED REGULATIONS.~~

31 THE COMMITTEE MAY EXERCISE A POWER GRANTED UNDER THIS SUBTITLE  
32 OVER AN EMERGENCY OR PROPOSED REGULATION OR A SPECIFIC, DISTINCT, AND  
33 SEVERABLE PROVISION OF AN EMERGENCY OR PROPOSED REGULATION.

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
35 effect October 1, 2004.

